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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,802	11/09/2001	Richard M. Timms	1550-71b	2040

7590 08/16/2004

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EXAMINER

LINDSEY, RODNEY M

ART UNIT PAPER NUMBER

3765

DATE MAILED: 08/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/035,802	<b>Applicant(s)</b> TIMMS ET AL.	
	<b>Examiner</b> Rodney M. Lindsey	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-17 is/are rejected.
- 7) ☒ Claim(s) 9,10,18 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/30/04</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference character(s) mentioned in the description: "120".

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The disclosure is objected to because of the following informalities: on page 15, line 13 "144" it appears should be --124--, on page 15, line 16 "46" it appears should be --140--, on page 15, line 17 "48" it appears should be --144-- and on page 15, line 19 "48" it appears should be --144--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the

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invention. In claim 7 “said vent apertures” has no antecedent basis and it appears should be -- said third vent apertures--.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 4, 5, 7, 11, 12, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Gath. With respect to claim 1 note outer shell 1, inner liner 15, headband 16, 17, 46 with forward portion 17, lateral portions 46 and rearward portion 16 and the venting system including a first vent aperture 24, a second vent aperture 43 and third vent apertures 43 spaced from the second vent aperture 43. With respect to claim 2 note the pathways between the apertures providing fluid communication as claimed. With respect to claim 4 note the forward and rearward locations of the apertures 43. With respect to claim 5 note such an extent of the apertures 43. With respect to claim 7 note the presence of four apertures 43. With respect to claim 11 note that an aperture 24 and an aperture 43 together are equivalent to a central aperture system as claimed and that the other apertures 43 define a peripheral aperture system as claimed. With respect to claim 12 note the pathways between the apertures providing fluid communication as claimed. With respect to claim 14 note the forward and rearward locations of the apertures 43. With respect to claim 16 note the presence of four apertures 43.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3, 6, 8, 13, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gath in view of Sundahl et al. With respect to claims 3, 6, 13 and 15 Gath does not teach elongated apertures. Sundahl et al. teach old elongated apertures as at 124,125,126. It would have been obvious to modify the headgear of Gath such that the apertures 43 are elongated in the manner of the elongated apertures of Sundahl et al. since one of ordinary skill in the art at the time of the invention would readily have recognized the expedience of elongated apertures in achieving a like result of effecting ventilation of the headgear. With respect to claims 8 and 17 Gath does not teach a fabric inner lining with openings for the third vent apertures. Sundahl et al. at 47 teach an inner lining with openings for communication of air to vent opening of a headgear. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the headgear of Gath such inner lining 47 of Sundahl et al. to achieve the advantage of absorbing perspiration while permitting passage of air for ventilation purposes. That the lining be a fabric would have been considered an obvious matter of choice and design to one of ordinary skill in the art at the time of the invention since all that would have been required is that the lining possess openings for permitting ventilation.

***Allowable Subject Matter***

9. Claims 9, 10, 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claim 20 is allowed.

***Conclusion***

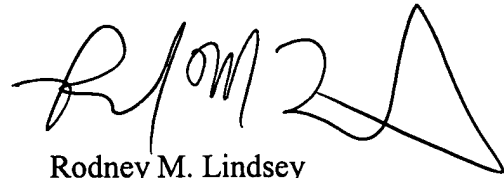
11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note particularly, the similar arrangement of the apertures in the shell and linings of Katz, Tanaka, Uhlmann et al. and Hartman.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (703) 305-7818. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'R/M 2' followed by a large, stylized flourish.

Rodney M. Lindsey  
Primary Examiner  
Art Unit 3765

rml